

Letter of Findings Number: 02-20130298P
Tax Administration: Collection Fees
For the Year 2010

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.

ISSUES

I. Tax Administration—Collection Fees.

Authority: IC § 6-8.1-8-2.

Taxpayer protests the imposition of fees relating to various collection costs.

II. Tax Administration—Penalty & Interest.

Authority: IC § 6-8.1-10-1; IC § 6-8.1-5-1; [45 IAC 15-11-2](#).

Taxpayer protests the Department's imposition of a penalty and interest.

STATEMENT OF FACTS

Taxpayer received an extension for its 2010 corporate tax return; Taxpayer failed to comply with IC § 6-8.1-6-1. Because of this, the Indiana Department of Revenue ("Department") imposed penalty and interest. Eventually the matter progressed through the stages of collection to the point where collection fees also were imposed. Taxpayer filed a protest regarding the matter, and an administrative hearing was held.

I. Tax Administration—Collection Fees.

DISCUSSION

In a letter dated May 20, 2013, Taxpayer's representative states the following (in relevant part):

As Accountants for the above named Taxpayer, we are responding to a refund check recently received for less than the anticipated amount. It turns out the taxpayer's refund was reduced by penalties and interest from a previous late payment charge.

Additionally, the letter states that while waiting on its abatement request, "[T]he taxpayer received a collection letter that was addressed to the wrong corporate name and wrong address." Taxpayer states that it should not "be held liable for the additional fees that were a result of the department sending correspondence to the incorrect Corporation."

IC § 6-8.1-8-2(b) states:

(b) If the person does not pay the amount demanded or show reasonable cause for not paying the amount demanded within the ten (10) day period, the department may issue a tax warrant for the amount of the tax, interest, penalties, collection fee, sheriff's costs, Clerk's costs, and fees established under section 4(b) of this chapter when applicable. When the department issues a tax warrant, a collection fee of ten percent (10[percent]) of the unpaid tax is added to the total amount due.

(Emphasis added).

The Department's records show the Demand Notice was printed on October 24, 2011 ("AR-40"). Taxpayer does not believe it should be "responsible when they were told the account was on hold and that any correspondence that may have been sent was sent to the wrong address." Taxpayer at the hearing stated that its IT-20 tax return for year 2010 had the updated name and address (Taxpayer in its protest documentation provided the Department with a copy of the first page of the IT-20 for 2010, which has the new name and address). Taxpayer, in effect, argues that the 2010 return served as notice to the Department about the relevant name and address changes. Taxpayer's IT-20 for the year 2010 was processed by the Department in June of 2011.

Taxpayer also e-mailed to the Department a copy of a timeline. According to Taxpayer's timeline, Taxpayer contacted a Department employee in June of 2011 "to verify payment was received" and Taxpayer was told by the Department's employee that Taxpayer would receive a penalty notice and that it could request penalty abatement. From the documents Taxpayer has provided, the Department sent a letter to original company name and address on November 17, 2011. Taxpayer also received an e-mail on November 17, 2011 from the Department's Collection Division. Taxpayer, on the same day, sent an e-mail and attachment to its accountant regarding the matter. That e-mail, from Taxpayer to its accountant, states:

You will also notice they [the Department] have the incorrect name and address so obviously we have not been receiving any written correspondence alerting us to this issue. Please include a request to correct our address in your letter.

Taxpayer's accountant then sent the Department a letter, dated November 21, 2011, stating in part:

We are [. . .] requesting that all penalties assessed be removed due to an inadvertent omission and we are also requesting that the name and address be changed on your records to reflect the new corporate name of [Company B].

On November 23, 2011, the Demand Notice became a Collection Agency Warrant ("WAR-A").

In reviewing the matter, the Department notes that Taxpayer was in contact with the Department in June of 2011. Taxpayer had updated its name and address on its IT-20, which was processed by the Department in June of 2011. Taxpayer, after being contacted by the Department via e-mail, had its accountant send a letter (dated November 21, 2011) to the Department requesting penalty abatement and also requesting a name and address change. A couple of days later, the matter became a tax warrant for collection. Taxpayer has provided the Department with sufficient explanation and documentation regarding the matter, thus Taxpayer's protest on this issue is sustained.

FINDING

Taxpayer's protest of the collection fees is sustained.

II. Tax Administration—Penalty & Interest.

DISCUSSION

The Department imposed a penalty for Taxpayer's failure to comply with IC § 6-8.1-6-1, which states in part: (a) If a person responsible for filing a tax return is unable to file the return by the appropriate due date, he may petition the department, before that due date, for a filing extension. The person must include with the petition a payment of at least ninety percent (90[percent]) of the tax that is reasonably expected to be due on the due date. When the department receives the petition and the payment, the department shall grant the person a sixty (60) day extension.

Despite Taxpayer's protest letter stating that penalty and interest were also being protested by Taxpayer, at the hearing Taxpayer's representative stated that only the collection fees were being protested. Thus Taxpayer at the hearing withdrew the penalty and interest protest. For the purposes of clarity, however, the Department notes the following. The Department notes first that interest cannot be waived by the Department (See IC § 6-8.1-10-1(e)). Secondly, regarding the penalty, Taxpayer did not establish "reasonable cause" as is required under [45 IAC 15-11-2\(c\)](#). Taxpayer's January 24, 2012 letter states there was a merger of companies and name change, and that "[a]s a result of the many changes it was realized that the tax payment had not been sent in earlier." And in an e-mail to the Department, Taxpayer states "the company inadvertently missed the extension payment due to the consolidation of the corporation and name change." As the Department correctly stated to Taxpayer in a February 7, 2012, letter:

After reviewing your correspondence the Department has determined that the penalty for the above mentioned account period is valid. The request for abatement has been denied. Penalty for the late payment will not be imposed if at least 90[percent] of the tax is paid by the original due date. Any tax paid after the original due date must include penalty and interest.

Under IC § 6-8.1-5-1(c) the Department's proposed assessments are presumed to be correct; Taxpayer did not meet its burden under that statute.

FINDING

Taxpayer's protest of the penalty and interest is denied.

SUMMARY

Taxpayer's protest of the collection fees is sustained; Taxpayer's protest of the penalty and interest is denied.

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